APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND FILED FEBRUARY 17, 2003

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50473
Summary Calendar

DWAIN L. CADELL, Individually and as Independent Executor of the Estate of Alta B Caddell, Deceased

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA; TERRI K. TREVINO

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-01-CV-283

Before JONES, STEWART and DENNIS

PER CURIAM:*

Dwain Caddell appeals the district court's order dismissing for lacking subject matter jurisdiction his action seeking a declaratory judgment declaring a lien in favor of the United

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

States to be void, and seeking an injunction enjoining the United States from foreclosing. The district court dismissed Caddell's case after determining that the limitations period provided in the applicable statute, 28 U.S.C. § 2401(a), had expired.

Caddell argues that the district court improperly converted the Government's motion under FED. R. CIV. P. 12(b)(1) into a motion for summary judgment without giving him a reasonable opportunity to present evidence to support his position that the court had jurisdiction to hear his claim.

Statutes of limitations defining the extent of a waiver of sovereignty are jurisdictional. *E.g.*, *United States v. Dalm*, 494 U.S. 596, 608 (1990); *Ramming v. United States*, 281 F.3d 158, 165 (5th Cir. 2001); *United States v. Gandy*, 234 F.3d 281, 283 (5th Cir. 2000); *Dunn-McCampbell Royalty Interest v. Nat'l Park Serv.*, 112 F.3d 1283, 1287 (5th Cir. 1997). A motion under Rule 12(b)(1) is thus the proper method of challenging a court's subject matter jurisdiction. *Ramming*, 281 F.3d at 161. The court need not convert a Rule 12(b)(1) motion into a motion for summary judgment when it considers matters outside of the pleadings. *See Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 512 (5th Cir. 1980).

Caddell argues that the district court was not authorized to be the factfinder on the application of the statute of limitations. The district court did not err when it resolved disputed facts to determine whether it had subject matter jurisdiction over Caddell's claim. *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996).

Next, Caddell argues that the six-year limitations period provided in 28 U.S.C. § 2401(a) had not run as of September

2001, when he filed suit. We review de novo a district court's determination that a statute of limitations has run. *Clymore v. United States*, 217 F.3d 370, 373 (5th Cir. 2000). After a thorough review of the record, we agree with the district court that the limitations period began to run in 1984. Thus, Caddell's claim, filed in September 2001, was filed after the limitations period had expired.

Lastly, Caddell argues that the district court should have allowed his claim to have been equitably tolled. While this court has held that the limitations period provided in 28 U.S.C. § 2401(a) may be equitably tolled, *Clymore*, 217 F.3d at 374, we need not decide whether equitable tolling applies with respect to liens involving real property because Caddell has failed to establish that he would be entitled to equitable tolling.

Equitable tolling is only available in "rare and exceptional circumstances." *Teemac v. Henderson*, 298 F.3d 452, 457 (5th Cir. 2002) (quoting *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998)). Equitable tolling is proper when "the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period", or "the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *See Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990). Caddell's argument for equitable tolling does not allege government misconduct or trickery, nor does it indicate that he actively pursued judicial remedies. As a result, Caddell cannot show that the district court abused its discretion in not extending equitable tolling to his claim.

Because the district court was not in error when it dismissed Caddell's complaint, its judgment is AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION DATED AND FILED MARCH 15, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
WACO DIVISION**

CIVIL ACTION NO. W-01-CA-283

DWAIN L. CADDELL, Individually and as Independent Executor of the Estate of Alta B. Caddell, Deceased,

Plaintiffs,

v.

UNITED STATES OF AMERICA and TERRI K. TREVINO,

Defendants.

ORDER

Plaintiffs Dwain L. Caddell, Individually, and as Independent Executor of the Estate of Alta B. Caddell, Deceased ("Plaintiffs") filed this suit in the 82nd Judicial District Court of Falls County, Texas. Plaintiffs seek a declaratory judgment that certain liens claimed by the United States on their property are void. Defendants removed the action to this Court and filed a motion to dismiss Plaintiffs' petition. Plaintiffs have filed a motion for leave to file a first

amended complaint, which the Court hereby **GRANTS**. After receiving a copy of Plaintiffs' motion for leave to amend, Defendants filed an additional Motion to Dismiss Plaintiff's First Amended Original Complaint, which the Plaintiffs have not opposed. Having reviewed the Defendants' motions, the Plaintiffs' responses, and the pleadings in this case, the Court is persuaded that dismissal of Plaintiffs' claims is warranted.

I. BACKGROUND

Plaintiffs' First Amended Original Complaint contains the following factual recitation:

> On or about April 1977, Dwain Caddell and wife, Shirley Caddell, and Alta B. Caddell, a widow (collectively herein "Caddells"), conveyed certain real property by Warranty Deed to the American Bank of Waco in lieu of foreclosure. The Deed described as the consideration the release and cancellation of all liens held by American Bank of Waco under a Deed of Trust dated April 25, 1975, recorded in Volume 129, Page 97, Deed of Trust dated April 25, 1975, recorded in Volume 129, Page 92, and Deed of Trust dated April 25, 1975 recorded in Volume 129, Page 84, all in the Deed of Trust Records of Falls County, Texas. The Warranty Deed and prior liens mistakenly included the homestead property of Dwain Caddell and wife, Shirley Caddell and Mr. Caddell's mother, Alta B. Caddell. Prior to April, 1975, Alta B. Caddell had acquired survivor homestead rights in 200 acres of rural property

pursuant to Section 283, Texas Probate Code. Dwain Caddell is the Executor of the Estate of Alta B. Caddell, Deceased. As part of a debt refinancing application made by the Caddells to Farmers Home Administration ("FmHA["] and now known as Farm Service Agency), prior to April, 1977, FmHA advanced funds to the Caddells for the purpose of refinancing the Caddells' cattle and farming operations. However, in the interim, with the knowledge of the FmHA County Supervisor, the American Bank of Waco threatened foreclosure of its liens, and then in a sham or pretended sale, purportedly sold the Property, including the Plaintiff[s'] homestead property, back to the Plaintiffs with financing provided by Craig B. Silverthorne. The Deed transferring the Property back to Dwain Caddell, Shirley Caddell and Alta B. Caddell, recited the retention of a vendor's lien, although the Caddells had continually occupied and used the Property as a homestead. A Transfer of Lien by Craig B. Silverthorne to the United States of America was recorded, and it purports to include a vendor's lien on Plaintiff[s'] homestead property. The Property was posted for non-judicial foreclosure with the sale scheduled on October 2, 2001. The Notices of Substitute Trustee's Sale served upon Plaintiff are attached as Exhibits "A" and "B" to Plaintiffs' Original Petition and Application for Injunctive Relief previously filed with Notice of Removal which Note of Substitute Trustee's Sale are incorporated herein by reference. To Plaintiff[s'] knowledge, the Defendants did not conduct a foreclosure sale on the Property on October 2, 2001.

Appendix B

[ ] Plaintiff asserts an action under the Federal Declaratory Judgment Act (28 U.S.C. § 2201) and alternatively, the Texas Uniform Declaratory Judgment Act (CPRC § 37.001, *et seq.*) seeking a declaration that the alleged liens claimed by Defendant, United States of America, are void as to 400 acres of homestead property more fully described in Exhibit "C" attached to Plaintiff[s'] Original Petition, which is incorporated herein by reference. Plaintiff would show that FmHA, at all material times, was aware that such Property was claimed, occupied and used as homestead property and that the transfer of the Property to the American Bank of Waco with the subsequent reconveyance back to the Caddells was a pretended sale in violation of the Texas Constitution and other applicable law. Further, the granting of liens to, and the subsequent reconveyance by American Bank of Waco of the homestead property, was a mutual mistake which was known to the government employees who were assisting the Caddells in refinancing the indebtedness. Despite several express and implied admissions and representations made by various employees of the Farmers Home Administration to the effect that the 400 acres of homestead property claimed by Plaintiff was not subject to a valid lien of the United States of America, the Farmers Home Administration apparently reversed its position after Dwain and Shirley Caddell prosecuted an administrative appeal which included this issue. These admissions and representations were relied upon by the Plaintiff and they estop the Government

from asserting a lien on the 400 acres of homestead property and equitably toll any statute of limitation within which Plaintiff was required to act.

Plaintiffs' First Amended Original Complaint, pp. 2-4.

II. DISCUSSION

As a general rule, the federal declaratory judgment statute does not offer an independent ground for jurisdiction. *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir. 1999). "Rather, it permits the award of declaratory relief only when other bases for jurisdiction are present." *Id.*

In this case, Defendants argue there is no jurisdiction against the United States because Plaintiffs' claims are barred by the six-year period of limitations prescribed by 28 U.S.C. § 2401. The exhibits reflect that the United States attempted to foreclose on at least a portion of Plaintiffs' property in 1982. In response, Plaintiffs filed a petition for bankruptcy. The United States filed a proof of claim on January 24, 1984, in which it asserted liens against all of Plaintiffs' property. In January 1987, the United States petitioned the bankruptcy court to lift the automatic stay so that it could proceed with foreclosing its liens against all of Plaintiffs' property. After a hearing, the bankruptcy court granted the motion to lift stay and specifically ruled that the United States had a valid lien against all of Plaintiffs' property. Plaintiffs were on notice as early as 1984 that the United States was asserting a lien against all of their property. The present suit, filed almost 20 years later, is beyond the six-year limitations period established for a suit against the United States. Plaintiffs'

estoppel and equitable tolling arguments are without merit because the events upon which Plaintiffs rely occurred over nine years after the United States first asserted its adverse lien against Plaintiffs' property, well beyond the six-year limitations period. Accordingly, it is

ORDERED that Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and Motion to Dismiss Plaintiffs' First Amended Original Complaint are **GRANTED**. It is further

ORDERED that any motions not previously ruled upon by the Court are **DENIED**.

SIGNED this 15 day of March, 2002.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge